



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,948	12/24/2003	Rod Walsh	4208-4172	9580
27123 7590 05/30/2008 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
EXAMINER				
LOO, JUVENA W				
ART UNIT		PAPER NUMBER		
2616				
NOTIFICATION DATE		DELIVERY MODE		
05/30/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com

Shopkins@Morganfinnegan.com

jmedina@Morganfinnegan.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/743,948

Applicant(s)

WALSH ET AL.

Examiner

JUVENA LOO

Art Unit

2616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Kwang B. Yao/
Supervisory Patent Examiner, Art Unit 2616

JUVENA LOO
Examiner
Art Unit: 2616

Continuation of 11, does NOT place the application in condition for allowance because:

I. Claim Rejections - 35 USC 112, Second Paragraph

Regarding claims 1, 21, and 40, claims 1, 21, and 40 are rejected under 35 USC 112, Second Paragraph. Rejections are withdrawn.

II. Claim Rejections - 35 USC 102

1. Claim 58

Regarding claim 58, the applicant argued that for

- (i) a negative acknowledgement (NACK) and transmission mechanism for sending an acknowledgement or transmission of missing and mangled data to said sending device or to another receiving device, "The cited text does not disclose a receiver sends a NACK for missing or damaged packets to a sending device or another receiver" in page 14.

In response to applicant's argument, the examiner respectfully disagrees with the argument above since the cited text from the Hur reference (column 6, lines 54 - 57) discloses if a receiver finds and confirms the damaged received data, the receiver can request for the retransmission of the necessary data by using NACK. In other words, the receiver uses NACK to request retransmission of any necessary data from the sender if it determines that the received data is damaged. Therefore, the Hur reference (column 6, lines 54 - 57) discloses the claimed feature: a negative acknowledgement (NACK) and transmission mechanism for sending an acknowledgement or transmission of missing and mangled data to said sending device or to another receiving device.

Regarding claim 58, the applicant argued that for

- (ii) transmitting a retransmission of said missing or mangled data from said sending device or said other receiving device to complete the data packet and a data transmission session, "The cited text at lines 55 - 57 discloses "where there is an error in the data packet received from the source, the receiver shifts to the step of receiving the data and heartbeat from the source and in case where there is no more error to the data packet, the procedure is terminated." Applicant can find no disclosure in the cited text of transmitting a re-transmitting a re-transmission of said missing or mangled data from said sending device or said other receiving device to complete the data packet and a data transmission session" in pages 14 - 15.

In response to applicant's argument, the examiner respectfully disagrees with the argument above. The cited text by Examiner from the Hur reference (column 3, lines 29 - 57) discloses the steps of error control/correction technique used in data transmission and reception. The steps involve, in brief, the receiver receiving data and heartbeat from the source and checking for error and "outside the sequence number zone" packet. The receiver uses retransmission requests and re-receives the data from the source. This process repeats until there is no more error detected by the receiver. Therefore, the Hur reference (column 3, lines 29 - 57) discloses the claimed feature: transmitting a retransmission of said missing or mangled data from said sending device or said other receiving device to complete the data packet and a data transmission session.

2. Claims 59 - 61, and 63

Regarding claims 59 - 61, and 63, claims 59 - 61, and 63 remain unpatentable over the Hur reference.

III. Claim Rejections - 35 USC 103

1. Claim 1

Regarding claim 1, the applicant argued that for

- (i) transmitting a data packet from at least one sending device to at least one receiving device at different rates and in different channels, "The cited text describes the source transmitting in a single channel at a single transmission rate, not different rates, to recipients that operate at different speeds." in page 16.

In response to applicant's argument, the examiner respectfully disagrees with the argument above. The cited text from Miller reference (column 17, lines 45 - 55 and Figure 6) discloses a heterogeneous multicast network that has a multicast group with five members and each member of the group is connected by a different capacity or different rate link. In other words, each member or recipient is connected to and communicated with the network at different link/channel and at different rate. Therefore, the cited text from Miller (column 17, lines 45 - 55) discloses the claimed limitation: transmitting a data packet from at least one sending device to at least one receiving device at different rates and in different channels.

Regarding claim 1, the applicant argued that for

- (i) transmitting a data packet from at least one sending device to at least one receiving device at different rates and in different channels, "There is no changing the set speed of transmission and recipients accept lost packets for retransmission at the set speed as described in Miller at column 11, lines 15 - 62".

In response to applicant's argument, the examiner

respectfully disagrees with the argument above. The Miller discloses

that the settable transmission rate represents an upper bound for the transfer rate, rather than a fixed transfer rate (column 11, lines 7 - 10). In addition, Miller discloses an equation for determining link capacity for all the links that shows congestion (column 11, lines 15 - 22) and how it can be used to calculate the number of dropped frames (column 11, lines 23 - 37). Miller further discloses the use of a user defined Group Threshold parameter, expressed in percent of dropped frames, as a limit for a member to determine if it needs to take actions so it will not adversely affect the rest of the group (column 11, lines 37 - 62) and the highest percentage of frame drops from the group which is under the Group Threshold can be used as a factor to adjust the transfer rate (column 11, lines 62 through column 12, line 2). Therefore, Miller discloses a method for congestion/flow control and how transfer rate can be adjusted (column 11, lines 7 through column 12, line 2).

Regarding claim 1, the applicant argued that for

(i) transmitting a data packet from at least one sending device to at least one receiving device at different rates and in different channels, "Miller does not describe or suggest ALC published by Roca and Mordelet in 2001" in page 16.

In response to applicant's argument, the examiner acknowledges that Miller does not describe or suggest Asynchronous Layered Coding (ALC) published by Roca and Mordelet in 2001.

Regarding claim 1, the applicant argued that for

(ii) determining at said receiving device missing or mangled data transmitted from said sending device using negative acknowledgement (NACK)-Oriented Reliable Multicast (NORM) protocols at the receiving device, "Incorporating Adamson and Macker with their timer based feedback suppression would render Miller inoperative by the failure to send retransmissions" in page 17.

In response to applicant's argument, the examiner respectfully disagrees with the argument above since timer-based feedback suppression is used to minimize the amount of expected feedback (see "Exponential Timer Based Feedback Suppression").

Regarding claim 1, the applicant argued that for

(iii) sending an acknowledgement or transmission of missing or mangled data from said receiving device to said sending device or to another receiving device, "The cited text discloses recipients sending NACKs to the server only until the sender indicates DONE messages have been received from all recipients and then the transmission process ends or the sender sends status requests to unresponsive clients. Applicant can find no disclosure in the cited text or elsewhere in Miller where the recipient sends NACKs to other recipients" in page 17.

In response to applicant's argument, the examiner acknowledges that Miller does not disclose the recipient sends NACKs to other recipients. However, the cited text from the Miller reference (column 4, line 50 to column 5, line 2) discloses the NACKs are used to indicate certain frames are to be retransmitted by the sending device. Therefore, the cited text from the Miller reference (column 4, line 50 to column 5, line 2) discloses the claimed feature: sending an acknowledgement or transmission of missing or mangled data from said receiving device to said sending device or to another receiving device.

Regarding claim 1, the applicant argued that for

(iv) transmitting a retransmission of said missing or mangled data from said sending device or said other receiving device to complete the data packet and a data transmission session, "The cited text describes the server receiving DONE messages from all recipients and then ending retransmission process or sending status requests to unresponsive recipients. Applicant can find no disclosure Miller related to a receiver receiving a retransmission from another receiver" in page 17.

In response to applicant's argument, the examiner acknowledges that Miller does not disclose a receiver receiving a retransmission from another receiver. However, the cited text from the Miller reference (column 4, line 50 to column 5, line 19) discloses the NACKs are used to indicate certain frames are to be retransmitted by the sending device and that the process is repeated as necessary until no more frames need to be retransmitted by the sending device. Therefore, the cited text from the Miller reference (column 4, line 50 to column 5, line 19) discloses the claimed feature: transmitting a retransmission of said missing or mangled data from said sending device or said other receiving device to complete the data packet and a data transmission session.

2. Claim 21

Regarding claim 21, claim 21 remains unpatentable over Miller in view of R. Brian Anderson and Joseph P. Macker for the same reasons indicated in the consideration of claim 1 above.

3. Claim 40

Regarding claim 40, claim 40 remains unpatentable over Miller in view of R. Brian Anderson and Joseph P. Macker for the same reasons indicated in the consideration of claim 1 above.

4. Claims 2 - 9, 11 - 20, 31 - 39, and 41 - 48

Regarding claims 2 - 9, 11 - 20, 31 - 39, and 41 - 48, claims 2 - 9, 11 - 20, 31 - 39, and 41 - 48 remain unpatentable over Miller in view of R. Brian Anderson and Joseph P. Macker.

5. Claims 9 - 10, 29 - 30, 48 - 49, and 62

Regarding to claims 9 - 10, 29 - 30, 48 - 49, and 62, claims 9 - 10, 29 - 30, 48 - 49, and 62 remain unpatentable over Miller in view of Roca and Mordelet II.

Regarding to claims 9 - 10, 29 - 30, 48 - 49, and 62, the applicant argued that, "The combination of Miller and Roca and Mordelet II would be inoperative by reason of Miller relying on a single channel using a set transmission and requiring NACK transmissions over a separate return channel (Miller at column 8, lines 52 - 59). Roca and Mordelet II do not provide a return channel. Without such separate NACK channel in Roca and Mordelet II, Miller would be inoperative" in pages 18 and 19.

In response to applicant's argument, the examiner respectfully disagrees with the argument above since the Miller reference (column 17, lines 45 - 55 and Figure 6) discloses a heterogeneous multicast network that has a multicast group with five members and each member of the group is connected by a different capacity or different rate link. In other words, the sending device is transmitting data to each member or recipient in a different link/channel and at different rate. The cited text, by the applicant, from Miller (column 8, lines 52 - 59) discloses that the transmission path from the sending device to the recipient and the receiving path to the sending device from the clients are, in general, separated. Using separated transmission and return path would not make Miller inoperative.

6. Claim 62

Regarding claim 62, claim 62 remain unpatentable over Miller in view of Roca and Mordelet II.

Regarding claim 62, the applicant argued that, "Applicant can find no disclosure in Roca and Mordelet II for sending and receiving retransmissions from another receiver. Roca and Mordelet II fail to supply the missing retransmission feature in Hur" in page 19.

In response to applicant's argument, the examiner acknowledges that Roca and Mordelet II does not disclose sending and receiving retransmissions from another receiver. However, the examiner respectfully disagrees with the argument that the retransmission feature is missing in Hur. The retransmission feature is disclosed in Hur as indicated in the consideration of claim 58 above.

7. Claim 64

Regarding claim 64, the applicant argued that, "Neither Hur nor Miller, the cited art, include the features of sending retransmission requests to a sender or a receiver or receiving retransmission from a sender or receiver for reasons discussed in the consideration of claim 58" in page 19.

In response to applicant's argument, the examiner respectfully disagrees for the same reasons indicated as in the consideration of claim 58 above. Claim 64 remains rejected.